Case No. 79424

In the Supreme Court of the State of Nevada

DESIRE EVANS-WAIAU, individually; GUADALUPE PARRA-MENDEZ, individually;

Appellants,

v.

BABYLYN TATE

Respondent.

APPELLANTS' PETITION FOR REVIEW

Appeal from the Eighth Judicial District Court
Clark County, Nevada
The Honorable Mary Kay Holthus, District Judge
Case No. A-16-736457-C

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made so that the judges of this Court may evaluate for possible disqualification or recusal.

1. Appellants Desire Evans-Waiau and Guadalupe Parra-Mendez are individuals.
2. Identify all parent corporations and any publicly held company that owns 10% or more of the parties' stock:

   NONE

3. Names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

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4. If any litigant is using a pseudonym, disclose the litigant's true name:

NONE

DATED this 9th day of August, 2021.

/s/ Kevin T. Strong

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PETITION FOR REVIEW

Appellants Desire Evans-Waiau and Guadalupe Parra-Mendez (collectively "Evans-Waiau") respectfully petition this Court for review of the Nevada Court of Appeals' Order of Affirmance in *Evans-Waiau v. Tate*, Case No. 79424-COA (Nev. Ct. App. May 25, 2021) ("Order of Affirmance"). As part of its Order of Affirmance, the Court of Appeals created a new legal standard requiring a party, who timely objects to improper argument, to also file a motion for new trial, to properly preserve the issue for appeal. *See* Order of Affirmance, at p. 8. As a result, the Court of Appeals refused to consider whether Respondent Babylyn Tate's ("Tate") attorney made impermissible ability to pay arguments to warrant a new trial even though Evans-Waiau's counsel timely objected to the improper arguments and the trial court substantively ruled on the objection. 10 A.App.02364, 02366, 02368. The Court of Appeals recently relied on this illegitimate standard to deprive another objecting party from receiving appellate review of improper attorney argument merely because a motion for new trial was not also filed. *See Paz v. Rent-A-Center*, Case No. 77520-COA, 2021 Nev. Unpub. LEXIS 183, at *8 (Nev. Ct. App. Apr. 9, 2021).

This Court has never held that a party must **both** contemporaneously object to improper argument and file a motion for new trial to properly preserve the issue for appeal. These flawed decisions from the Court of Appeals directly conflict with this Court's well-established jurisprudence that a timely objection properly preserves an issue for appeal. *See* Nev. R. App. P. 40B(a)(2). This Court's review is necessary to clarify that a contemporaneous objection, by itself, properly preserves issues arising from improper argument for appellate review.

The Court of Appeals also refused to consider, outside of its misinterpretation of the attorney misconduct legal construct articulated in *Lioce v. Cohen*, 124 Nev. 1, (2008), whether the ability to pay arguments made by Tate's counsel were improper as a matter of law to warrant a new trial. The Court of Appeals' decision has left the indelible impression that the ability to pay arguments made by Tate's counsel were appropriate even though this Court has determined this type of argument is improper.

I. STATEMENT OF FACTS

This matter arises from an October 30, 2015 motor vehicle collision in which Tate crashed her SUV into the back of Evans-Waiau's stopped car. 7 A.App.01600-01, 01656. During trial, Tate accepted responsibility for the collision and admitted Evans-Waiau did nothing to cause the collision. 7 A.App.01629-30. Tate never testified that she failed to see Evans-Waiau's car was stopped because of the cosmetic blackout covers on the taillights. 7 A.App.01649.[1] Tate's medical experts conceded that Evans-Waiau and Parra-Mendez were both injured as a result of the collision. 7 A.App.01531, 8 A.App.01918-19. Yet, the jury returned a general verdict in Tate's favor and awarded Evans-Waiau no damages. 10 A.App.02392. This unfair outcome was solely caused by the improper ability to pay arguments made by Tate's counsel.

Tate's counsel improperly argued to the jury that Tate could never save enough money to pay the millions of dollars in damages Evans-Waiau asked the jury to award. 10 A.App.02363-64, 02368-69. Tate's

[1] The Court of Appeals incorrectly stated, as part of its ruling, that Tate testified she was unable to see Evans-Waiau's brake lights or turn signal illuminated because of the cosmetic covers. *See* Order of Affirmance, at p. 2.

counsel laid the groundwork to ensure these arguments garnered sympathy from the jury well before he presented them to the jury. 7 A.App.01640, 01658. Tate was asked specific questions by her counsel to illuminate her precarious financial position. *Id.* In response to those questions, Tate testified she was only one working as her husband was retired because he had a heart attack. 7 A.App.01658. Earlier in her testimony, Tate testified she had three daughters, one of whom was in college, one of whom was in high school, and one of whom was in middle school. 7 A.App.01640. Although she was the only one working and missed a lot of hours from work for trial, Tate told her husband "**we'll be okay**." 7 A.App.01658 (emphasis added). Tate's testimony regarding her delicate financial condition was deliberately designed to emphasize her counsel's arguments that she will never be financially able to pay a substantial judgment.

During closing argument, Evans-Waiau's counsel asked the jury to award Evans-Waiau $1,000,000.00 for past pain and suffering and $2,000,000.00 for future pain and suffering. 10 A.App.02316, 02320. Tate's counsel then improperly argued to the jury just how difficult it will

be for anyone to pay the precise amount of money Evans-Waiau requested:

> The value of the dollar outside the courtroom is this, if the **average family** of four makes $50,000 a year, if the average family of four saves $50,000 a year [sic] makes $50,000 a year and let's pretend **that family** never had to pay a mortgage, never had to pay rent, never had to buy groceries, never ever [sic] to pay for a barber, never had to hail a cab, never went to the movies, never went to a restaurant, never paid a bill. **It would take that family that makes $50,000 a year**, if they never paid for any clothing, they never paid for children's clothing, never paid for schoolbooks, they never made a car payment, they never paid for gas, they never paid for electricity, it would save [sic] that family of four 20 years to save $1 million.
>
> **Most people in today's world**, most people in today's world even doing the best they can being as frugal as they can, if they manage to have another $5,000 in the bank at the end of the year --
>
> . . .
>
> If that **average family of four** managed at the end of the year to have $5,000 more in the bank than they have the previous year, they'd be doing -- **that's better than most of us**. That's $5,000 at the end of the year that they didn't have the previous year. **A lot of people aren't able to do that**.
>
> And if that family was able to save $5,000 a year, **how long would it take them to save $1 million? It would take them 200 years to save**

> **a million dollars. That's how much money they're asking for. 200 years. A million dollars. That's 1/3 of one element of one of the damages they're claiming this case.**
>
> **It would take them 600 years to save $3 million. That's not Monopoly money they're asking for. They're asking for real money. Real money.**

10 A.App.02363-64, 02368-69 (emphasis added).

Tate's counsel consciously chose these words knowing the jury was already aware of Tate's tenuous financial condition. The message conveyed to the jury was clear: Tate will never, under any circumstances, be able to save enough money to pay millions of dollars in damages. In response, jurors returned a general verdict in Tate's favor. 10 A.App.02392. Evans-Waiau was unfairly deprived of appellate review of these improper arguments by the Court of Appeals. Therefore, review is warranted.

II. LEGAL ARGUMENT

Evans-Waiau's counsel properly preserved his appellate challenge to the improper ability to pay arguments by making a contemporaneous and specific objection to the arguments. 10 A.App.02364. Nevertheless, the Court of Appeals concluded Evans-Waiau waived the issue for review

on appeal because she failed to also move for a new trial. *See* Order of Affirmance, at p. 8. This Court has never held that a motion for new trial is a prerequisite to secure appellate review of a trial court's ruling on a timely objection to improper argument. Rather, this Court has repeatedly held that a "failure to object constitutes waiver of an issue" on appeal. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 75 (2014); *see also*, *Lioce v. Cohen*, 124 Nev. 1, 17 (2008); *Ringle v. Bruton*, 120 Nev. 82, 95 (2004). The Court of Appeals erroneously interpreted this Court's decision in *Lioce* to require "a motion for new trial in the first instance" to secure appellate review. *See* Order of Affirmance, at pp. 6-7. The *Lioce* Court merely clarified the prevailing standards of review for district courts to apply "when deciding a motion for new trial based on attorney misconduct." 124 Nev. at 14. Filing a motion for new trial is not a condition precedent to secure appellate review of an attorney's improper argument when a contemporaneous objection was made and ruled upon during trial. To hold otherwise directly negates the importance of making a timely objection during trial, which is well-recognized by this Court, and unfairly deprives that party of appellate relief.

A. Nevada Law Does Not Require a Party Who Timely Objected to Improper Argument to Also Move for New Trial to Properly Preserve the Issue for Appeal

"To preserve a claim of attorney misconduct for appeal, a timely and proper objection must have been made at trial; otherwise, the claim is forfeited. *Regalado v. Callaghan*, 207 Cal. Rptr. 3d 712, 726 (Cal. Ct. App. 2016). "Timely and appropriate objections to instances of attorney misconduct serve at least two purposes:" (1) the objecting party "takes issue with the conduct;" and (2) they "conserve judicial resources" by allowing the trial court "to correct any potential prejudice and to avoid a retrial." *Ringle*, 120 Nev. at 94-95.

Over the course of several decades, this Court has continuously confirmed its longstanding view that a timely objection is the only condition a party must satisfy to properly preserve an issue for appeal:

> [U]nless specifically objected to at trial, objections to a substantive error in the absence of constitutional considerations are waived and no issue remains for this Court's consideration.

Nevada State Bank v. Snowden, 85 Nev. 19, 21 (1969).

> To preserve the contention for appellate review, specific objections must be made to allegedly improper closing argument.

Southern Pac. Transp. Co. v. Fitzgerald, 94 Nev. 241, 244 (1978).

> We have consistently held that failure to make a timely objection will preclude appellate consideration.

Pasgove v. State, 98 Nev. 434, 435 (1982).

> We reiterate the requirement in civil case that counsel timely and specifically object to instances of improper argument in order to preserve an issue for appeal.

Ringle, 120 Nev. at 95.

1. Timely objections provide an adequate factual record needed for appellate review

"Requiring an objection also has a practicable aspect: the trial court judge will rule on the objection, **giving the appellate court an actual trial court decision to review**." *State v. Burns*, 438 P.3d 1183, 1192 (Wash. 2019) (emphasis added). "Timely objection enables the parties and the trial court (1) to preserve an adequate record for appeal, and (2) to avoid prejudicial error by permitting reconsideration while it is still possible." *State v. Robinson*, 676 A.2d 384, 391 (Conn. 1996). This is precisely why the federal courts of appeal have held that "it is not necessary to file a motion for new trial in order to have reviewed on appeal questions properly preserved at trial." *United States v. Cook*, 432 F.2d 1093, 1101 (7th Cir. 1970); *see also*, *Richardson v. Oldham*, 12 F.3d

1373, 1377 (5th Cir. 1994) ("Filing a Rule 59 motion is not a prerequisite to taking an appeal"); *Floyd v. Laws*, 929 F.2d 1390, 1400-01 (9th Cir. 1991) ("A question raised and ruled upon need not be raised again on a motion for a new trial to preserve it for review").

> If there have been errors at the trial, duly objected to, dealing with matters other than sufficiency of the evidence, they may be raised on appeal from the judgment even though there has not been either a renewed motion for judgment as a matter of law or a motion for a new trial.

9B Charles Wright & Arthur Miller, *Federal Practice and Procedure* §2540 (3d ed. 2021)

2. Evans-Waiau's counsel timely objected to the improper ability to pay arguments thereby establishing an adequate record to preserve appellate review

Once Tate's counsel implored jurors to sympathize with Tate by directly inviting them to consider the immense financial burden she will suffer to save enough money to pay a multimillion-dollar judgment for the rest of her life, Evans-Waiau's counsel timely and specifically objected to the improper arguments:

> MR. PRINCE: **I'm lodging an objection** to these arguments about saving money and extra money and earning that that's how you get to a million dollars a year because it goes to whether or not the Defendant would be paid to satisfy the [indiscernible].

> That is not in a consideration for this jury and **I want to move to strike those comments**, the value of the dollar about saving money, having an extra $5,000 to save. **I mean, that all goes to the ability to pay or satisfy**. He's trying to have the jury consider something not part of the instructions. Suggesting that who could ever pay for this and how long it would saddle the Defendant in some way.
> . . .
>
> MR. [PRINCE]: **Move to strike any income, earning, and saving. I guess that's what I'm saying because it goes to the thought process of ability to pay and it's the direct implication of that. So that's my objection**.

10 A.App.02364, 002366 (emphasis added).[2]

Following counsel's timely and articulate objection, Tate's attorneys **both** substantively responded to the objection by suggesting the arguments were proper because they addressed the value of a dollar. 10 A.App.02364, 02366-68. After both parties' attorneys made their record, the trial court allowed Tate's counsel to argue to the jury the length of time it would take a family to save a certain amount of money. 10 A.App.02368-69. The trial court reasoned these arguments gave jurors perspective regarding the amount of money Evans-Waiau

[2] The trial transcript incorrectly attributes this statement to Thomas Winner, Tate's trial counsel.

requested them to award. *Id.* The trial court allowed Tate's counsel to make the exact arguments Evans-Waiau's counsel requested to be stricken because they improperly referred to Tate's ability to pay. 10 A.App. 02364, 02366. As a result, the trial court substantively overruled the objection and motion to strike made by Evans-Waiau's counsel. Therefore, this specific objection sufficiently preserved the issue for review on appeal thereby nullifying the need for Evans-Waiau's counsel to move for a new trial, which is specifically contemplated under Nevada law.

B. The *Lioce* Decision was Intended Solely to Redefine the Standards Applicable to Motions for New Trial Based on Attorney Misconduct

The Court of Appeals misconstrued the *Lioce* decision by concluding that a motion for new trial must be filed solely in the context of improper argument to preserve the issue for appeal. *See* Order of Affirmance, at pp. 6-7. This conclusion is based on the flawed legal assumption that *Lioce* mandates a trial court to "make specific findings, both on the record during oral proceedings and in its order," even when the trial court already substantively ruled on the objection to the improper argument. *Id.* The Court of Appeals overlooked that such findings are required **only**

when a party files a motion for new trial based on attorney misconduct. *Lioce*, 124 Nev. at 19-20. In other words, *Lioce* did not hold that to preserve appellate review of improper argument, a motion for new trial must be always filed, even when a party objected to the argument. If this were true, then there would be no incentive for parties to contemporaneously object to improper argument because they would never be deprived of appellate review so long as they moved for a new trial. This outcome is inconsistent with this Court's jurisprudence that came before *Lioce* and was formally adopted by *Lioce*.

1. This Court has never deviated from only requiring a timely objection to improper argument to preserve any issue for appeal

Beginning with *Barrett v. Baird*, 111 Nev. 1496, 1514-15 (1995) (overruled by *Lioce*, 124 Nev. at 17), this Court articulated the appellate standard of review to decide whether attorney misconduct warranted reversal. *Id.* at 1515. *Barrett* did not address whether a party must timely object to the alleged misconduct during trial to preserve the ability to move for a new trial. By that point, it was already understood that a party **must** object to attorney misconduct to preserve the issue for appeal. *Southern Pac. Transp. Co.* 94 Nev. at 244.

In *DeJesus v. Flick*, 116 Nev. 812, 816 (2000) (overruled, in part, by *Lioce*, 124 Nev. at 17), this Court evaluated whether DeJesus's failure to object to the alleged misconduct precluded appellate review of the trial court's denial of a motion for new trial. As part of its analysis, the *DeJesus* Court reaffirmed that failing to object to attorney misconduct precludes appellate review. *Id.* at 816. The dissent in *DeJesus* bolstered the necessity to make timely objections by stating that appellate review of attorney misconduct should be solely predicated on whether a timely objection to the misconduct was made at trial. 116 Nev. at 826-27.

In *Ringle v. Bruton*, 120 Nev. 82, 95 (2004), this Court again emphasized that timely objections must be made to secure appellate review, even when a motion for new trial is made, absent extraordinarily rare circumstances. In *Bruton*, Ringle's counsel objected once to Bruton's counsel's statement that Ringle lied or had a motive to lie even though he repeated those statements. *Id.* at 87. The objection was limited to Bruton's counsel suggesting that Ringle's counsel aided or prompted Ringle to lie in court. *Id.* at 87-88. Ringle later moved for a new trial contending Bruton's counsel committed misconduct because he "repeatedly argued that Ringle lied to the jury and intimated that

Ringle's counsel induced perjured testimony." *Id.* at 94. The trial court denied Ringle's motion for new trial. *Id.*

On appeal, this Court determined Ringle's counsel failed to object to the arguments on the basis that calling Ringle a liar was improper. *Id.* at 96. Even though Ringle filed a motion for new trial because Bruton's counsel repeatedly called him a liar, this Court concluded that, because he failed to object on that precise basis, "any error resulting from the misconduct is deemed waived." *Id.*

Ringle establishes that failing to move for a new trial does not preclude appellate review of attorney misconduct so long as a timely and specific objection is made to the improper argument. *Lioce* does not erode this basic legal principle that has been in existence for decades. The Court of Appeals' attempt to dismiss the importance of making a timely objection to improper argument sets a dangerous precedent that necessitates clarification by this Court.

The *Lioce* Court acknowledged that motions for new trial may be made, irrespective of whether the improper argument was objected-to or unobjected-to. 124 Nev. at 17-19. Afterall, the only avenue available to seek redress for a party who fails to object to improper argument is to

move for a new trial. *See* Nev. R. Civ. P. 59. The *Lioce* Court never held that motions for new trial must be made to secure appellate review when a timely objection was made. 124 Nev. at 19. The *Lioce* Court only clarified the standards of review to assess motions for new trial and consistently endorsed the principle that **only** objections to improper arguments are required to preserve the issue for appeal:

> *Ringle* stated that a party must object to purportedly improper argument to preserve this issue for appeal. We **reapprove this requirement**, and we note that **it is also necessary that a party object in order to preserve this issue in the district court for motions for a new trial.**

Lioce, 124 Nev. at 19 (emphasis added).

The Court of Appeals also cited to this Court's decision in *Bato v. Pileggi*, Case No. 68095, 2017 Nev. Unpub. LEXIS 228 (Apr. 14, 2017) to justify its conclusion that a motion for new trial must always be filed to preserve appellate review of the improper argument. *See* Order of Affirmance, at p. 7. However, in *Bato*, this Court determined the issue arising from counsel's improper argument was not properly preserved for appeal because the aggrieved party did not object to the argument or move for a new trial. 2017 Nev. Unpub. LEXIS 228, at *3. Therefore, the

Court of Appeals erroneously stated the *Bato* Court held "that the failure to bring a motion for new trial in an attorney-misconduct appeal constitutes waiver." *See* Order of Affirmance, at p. 7. In actuality, a party waives its ability to challenge improper argument on appeal if he does not either object to the improper argument **or** move for a new trial. *Bato* does not deviate in any meaningful way from this basic legal principle.

The *Lioce* Court very clearly articulated the need to object to improper argument to preserve the misconduct issue under two distinct scenarios: (1) filing an appeal or (2) filing a motion for new trial. *Id.* Under either scenario, the trial court is afforded a full and fair opportunity to correct any error that resulted from the improper argument and to allow substantive review of its decision on appeal. The *Lioce* Court easily could have articulated the Court of Appeals' view that a party must object to the improper argument **and** file a motion for new trial to preserve the misconduct issue for appeal, but affirmatively chose not to. Imposing an additional requirement on a party who timely objected to improper argument and secured an adequate record from the

trial court, like Evans-Waiau, unfairly deprives that party of appellate review in direct contravention of Nevada law.

2. The Court of Appeals' reasoning unfairly diminishes the importance of making objections at trial by conditioning appellate review on filing a motion for new trial only

Even under *Lioce* and its progeny, both the appellate court and the trial court "may still review allegations of unobjected-to attorney misconduct" for plain error. 124 Nev. at 19; *see also*, *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 75 (2014) ("An attorney's failure to object constitutes waiver of an issue, unless the failure to correct the misconduct would constitute plain error"). Under the Court of Appeals' warped view, the only party who is deprived of appellate review of improper argument is the objecting party who did not move for a new trial. This constitutes an overly harsh and illogical outcome, particularly when the necessity of making a timely objection to secure appellate review has never truly been questioned by this Court. Evans-Waiau was not even afforded appellate review to determine whether the trial court's admission of the ability to pay arguments constituted plain error even though she timely objected. *See* Order of Affirmance, at pp. 7-8. Because the verdict reflects an extreme deviation from the evidence

presented, Evans-Waiau should have, at a minimum, received the benefit of plain error review.

The Court of Appeals overstated the necessity to move for a new trial to preserve appellate review of only improper arguments. This interpretation is unfairly punitive to parties who have satisfied the only requirement that has ever been articulated by this Court to preserve an issue for appeal. The harsh effect of the Court of Appeals' misinterpretation of *Lioce* cannot be overstated as it has unfairly deprived Evans-Waiau of the ability to seek redress resulting from the improper ability to pay arguments made by Tate's counsel.

C. Review is Warranted Because Nevada Law Prohibits Ability to Pay Arguments and Those Arguments Made the Jury Render a Verdict Based on Sympathy, Not the Evidence

Review by this Court is also warranted because, even outside of the *Lioce* framework, ability to pay arguments, standing alone, are improper as a matter of law. "The law has long required that the rich man and the poor man stand before the jury as equals so that all parties receive a verdict unaffected by their economic status." *Samuels v. Torres*, 29 So. 3d 1193, 1196 (Fla. Dist. Ct. App. 2010).

> Justice is to be accorded to rich and poor alike, and a deliberate attempt by counsel to appeal to social or economic prejudices of the jury, including the wealth or poverty of the litigants, is misconduct where the asserted wealth or poverty is not relevant to the issues of the case.

Hoffman v. Brandt, 421 P.2d 425, 428 (Cal. 1966).

"A case should be tried on the merits without reference to the wealth or poverty of the parties." *White v. Piles*, 589 S.W.2d 220, 222 (Ky. Ct. App. 1979). "Comments on the wealth of a party have **repeatedly and unequivocally been held highly prejudicial and often alone have warranted reversal**." *Whittenburg v. Werner Enters. Inc.*, 561 F.3d 1122, 1130 n.1 (10th Cir. 2009) (emphasis added).

This Court previously acknowledged the impropriety of ability to pay arguments. *See Olson v. Richard*, 120 Nev. 240, 244 (2004). In *Olson*, this Court determined that counsel for the defendants, Thomas and Carol Richard d/b/a Aztech Plastering Company, made many improper remarks, "**particularly** [those] **informing the jury that his clients were not wealthy people**." *Id.* (*citing Canterino v. Mirage Casino-Hotel*, 117 Nev. 19, 30 (2001) (Rose, J., concurring, in part and dissenting, in part)) (emphasis added).

"It is misconduct for an attorney to deliberately attempt to appeal to the economic prejudices of the jury by commenting on the wealth of the defendant." *Canterino*, 117 Nev. at 30 (Rose, J., concurring, in part and dissenting, in part)).[3] Commentary of this type has been found, standing alone, to constitute reversible error. *Batlemento v. Dove Fountain, Inc.*, 593 So. 2d 234, 241 (Fla. Dist. Ct. App. 1991).

"When an attorney commits misconduct, and an opposing party objects, the district court should sustain the objection and admonish the jury and counsel, respectively . . . ." *Gunderson*, 130 Nev. at 75. Immediately after Tate's counsel implored the jury to consider just how impossible it was for anybody to save enough money to pay the damages Evans-Waiau requested, Evans-Waiau's counsel specifically objected to the arguments as improper and formally requested the trial court to strike them. 10 A.App.02364, 002366. The record demonstrates the trial court failed to sustain the objection, strike the arguments, and admonish counsel pursuant to *Gunderson*. 10 A.App.02368-69. The reversible

[3] Notably, Justice Rose cited, with approval, to *Hoffman*, in which the California Supreme Court deemed commentary about the defendant's lack of wealth from his counsel was improper and "clearly misconduct." 421 P.2d at 428.

error committed by the trial court cannot reasonably be questioned because the verdict was completely unsupported by the evidence. The verdict reflected the jurors' view that even though Tate was negligent, they did not believe she should have to be saddled with the responsibility to pay a financially ruinous judgment for the rest of her life. Sympathizing with Tate's financial condition and inability to pay a multimillion-dollar damage played a significant factor in the jury's verdict because they even failed to award damages to Parra-Mendez, a fault-free passenger who asked the jury to award her over $50,000.00 in damages. 10A.App.02310, 02316. Because the jury understood it was impossible for Tate or anyone to save enough money to pay millions of dollars in damages, they chose to ignore the evidence and render a verdict that reflected compassion for Tate. The Court of Appeals' failure to acknowledge the harm caused by the ability to pay arguments and recognize how they deprived Evans-Waiau of a fair trial by adversely influencing the outcome further supports Evans-Waiau's request for review from this Court.

III. CONCLUSION

The Court of Appeals' ongoing failure to review improper arguments that are timely and meaningfully objected to by the aggrieved party merely because that party did not also move for a new trial should come to an end. This Court is well-positioned to reaffirm its stance that an issue raised on appeal concerning improper argument is always preserved so long as the party contemporaneously objected to the improper argument. This outcome will ensure that improper arguments made by attorneys are not allowed to persist merely because the objecting party appealed instead of first moving for a new trial.

Based on the foregoing, Evans-Waiau respectfully requests this Court to grant review pursuant to NRAP 40B(a)(2).

DATED this 9th day of August, 2021.

Respectfully Submitted,

/s/ Kevin T. Strong

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 Business, in 14-point, double-spaced Century Schoolbook font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) and NRAP 40(b)(3) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, and contains 4,657 words.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 9th day of August, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Supreme Court of Nevada on the 9th day of August, 2021. Electronic service of the foregoing document entitled **PETITION FOR REVIEW** shall be made in accordance with the Master Service List as follows:

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